

BOARD OF ENVIRONMENTAL PROTECTION

Verso Paper (formerly International Paper))	ANDROSCOGGIN RIVER APPEALS
Androscoggin (Jay) Pulp and Paper Mill)	
ME 0001937 and W000623-5N-F-R)	
)	
Rumford Paper Company)	
Rumford Pulp and Paper Mill)	Maine Pollutant Discharge Elimination
ME 0002054 and W000955-5N-G-R)	System Permits and Waste Discharge
)	Licenses and Water Quality
Town of Livermore Falls)	Certification
Publicly Owned Treatment Works)	
ME 0100315 and W0002654-5L-G-R)	
)	
FPL Energy Maine Hydro LLC)	
Gulf Island-Deer Rips Hydro Project)	Summary of Appeals and Appeal Proceedings
#L-17100-33-O-N)	

1. DEPARTMENT DECISIONS

On September 21, 2005, the Department issued a series of regulatory decisions affecting various facilities on the Androscoggin River. These decisions are summarized below.

- a. Androscoggin (Jay) Pulp and Paper Mill. By Order #W000623-5N-F-R and #ME0001937, the Department issued a combined waste discharge license and Maine Pollutant Discharge Elimination System Permit for the discharge of treated industrial process and other wastewaters to the Androscoggin River from a kraft pulp and paper mill in Jay, Maine, subject to a number of conditions. These conditions included, among other things: specified limitations on the discharge of various pollutants (including biochemical oxygen demand, total suspended solids, total phosphorus, and ortho-phosphorus); and the injection of specified amounts of additional oxygen into Gulf Island Pond, or other equivalent measures.

At the time, the Jay pulp and paper mill was owned and operated by International Paper but is now owned and operated by Verso Paper.

- b. Rumford Pulp and Paper Mill. By Order #W000955-5N-G-R and #ME0002054, the Department issued a combined waste discharge license and Maine Pollutant Discharge Elimination System Permit for the discharge of treated industrial process and other wastewaters to the Androscoggin River from a kraft pulp and paper mill in Rumford, Maine, subject to a number of conditions. These conditions included, among other things: specified limitations on the discharge of various pollutants (including biochemical oxygen demand, total suspended solids, total phosphorus, and ortho-phosphorus); and the injection of specified amounts of additional oxygen into Gulf Island Pond, or other equivalent measures.

The Rumford pulp and paper mill is owned and operated by Rumford Paper Company.

- c. Livermore Falls Publicly Owned Treatment Works. By Order #W002654-5L-G-R and #ME0100315, the Department issued a combined waste discharge license and Maine Pollutant Discharge Elimination System Permit for the discharge of treated sanitary wastewaters to the Androscoggin River from a publicly owned treatment works (hereinafter referred to as the “Livermore Falls wastewater treatment facility”) in Livermore Falls, Maine, subject to a number of conditions. These conditions included, among other things, specified limitations on the discharge of various pollutants (including total phosphorus and ortho-phosphorus).

The Livermore Falls wastewater treatment facility is owned and operated by the Town of Livermore Falls.

- d. Gulf Island-Deer Rips Hydro Project. By Order #L-17100-33-O-N, the Department approved water quality certification for the continued operation of the Gulf Island-Deer Rips Hydro Project, located on the Androscoggin River in the Cities of Lewiston and Auburn and the Towns of Greene, Turner, Leeds and Livermore, Maine, subject to a number of conditions. These conditions included, among other things, requirements for: specified minimum flow releases from the project dams; the future installation of fish passage facilities at the project dams for Atlantic salmon; the injection of specified amounts of additional oxygen into Gulf Island Pond, or other equivalent measures; and a contribution of \$100,000 towards the capital cost of equipment to remove phosphorus from the Livermore Falls wastewater treatment plant effluent, or other equivalent measures.

The Gulf Island-Deer Rips Hydro Project is owned and operated by FPL Energy Maine Hydro LLC.

In addition, on September 22, 2005, the Department signed two so-called “side agreements” between the Department and International Paper (“Agreement Between the Department of Environmental Protection and International Paper Company, Jay”) and between the Department and Rumford Paper Company (“Androscoggin River Waste Quality Improvement Agreement”) regarding future effluent reductions from each company’s pulp and paper mill.

2. APPEALS

On October 21, 2005, a total of 14 timely appeals of the Department decisions described above were filed by six separate parties, including: FPL Energy Maine Hydro LLC (“FPLE”); Conservation Law Foundation, Maine Rivers, Androscoggin River Alliance, and Androscoggin Lake Improvement Association (“CLF, et al.”); the Towns of Livermore Falls

and Jay (“Towns”)¹; International Paper (“IP”); Rumford Paper Company (“RPC”); and the Natural Resources Council of Maine (“NRCM”).

3. SUMMARY OF APPEALS OF WDL/MEPDES PERMIT FOR JAY PULP AND PAPER MILL

Appeals of the Department’s September 21, 2005 decision approving a waste discharge license and MEPDES permit for the Androscoggin (Jay) pulp and paper mill were filed by four parties: (a) IP; (b) NRCM; (c) CLF, et al.; and (d) FPLE.

(a) Appeal of IP. Appellant IP argues that the Department’s May 2005 Total Maximum Daily Load (TMDL) is flawed and should not be used to establish permit conditions or effluent limits. Specifically, Appellant IP contends that:

- (1) The Department’s water quality modeling does not account for the dynamic complexity of conditions in Gulf Island Pond;
- (2) The TMDL fails to establish a reasonable measure for algae blooms, and the correlation between chlorophyll-a, algae blooms and phosphorus assumed by the Department is scientifically unsupported;
- (3) The Department failed to consider the impact of non-point source pollution on phosphorus levels in Gulf Island Pond and, instead of addressing non-point source loads to the Androscoggin River, the Department has shifted all responsibility for phosphorus control to point sources, without sufficient scientific justification;
- (4) The Department’s assumptions regarding the relationship between pollutant loads and water quality are fundamentally flawed (specifically with regard to SOD levels, BOD decay rate, mixing coefficients, organic phosphorus decay rates, and ortho-phosphorus uptake rates);
- (5) The Livermore Falls impoundment is not a water quality impaired water and the relationship between point source loadings and the attainment of aquatic life criteria in the impoundment is highly suspect; and
- (6) The Department’s margin of safety is unnecessarily conservative.

Appellant IP further argues that certain effluent limits and other conditions of the Department’s September 21, 2005 decision are arbitrary and capricious and should be removed or modified. Specifically, Appellant IP contends that:

¹ The waste discharge license and Maine Pollutant Discharge Elimination System Permit for the Livermore Falls waste water treatment plant were subsequently modified and the Towns were dismissed as an appellant. See Section 9 below.

- (1) The weekly average limit established for BOD is not practicable;
- (2) The dates established for compliance with lower summer effluent limits for BOD and TSS are overly restrictive;
- (3) The TMDL cannot support the Department's conclusion that there is a need for a second oxygenation system for Gulf Island Pond, and IP's allocation for additional oxygen is excessive;
- (4) The requirement that IP engage in extensive water quality monitoring of Gulf Island Pond and/or designated sections of the Androscoggin River is unreasonable and overly-burdensome;
- (5) The requirement that IP conduct numerous investigations into the operation of its wastewater treatment plant and its manufacturing process is an impermissible and unlawful intrusion into IP's operations;
- (6) The requirement that IP monitor bald eagles is unnecessary;
- (7) The requirement that IP participate in the State's most current annual Fish Advisory Program should be deleted because the mill has been found to be in compliance with 38 MRSA Section 420-A (regarding the discharge of dioxin); and
- (8) The Department incorrectly identifies the recent amendment of 38 MRSA Section 465(4)(B) regarding Class C dissolved oxygen requirements as a change in water quality standards subject to approval by EPA.

On the basis of its arguments, Appellant IP requests that the Board remand the waste discharge license and MEPDES permit for the Androscoggin (Jay) pulp and paper mill to the Department for issuance of a revised order.

Finally, Appellant IP requests that all appeals of the discharge permits/licenses and water quality certification for facilities on the Androscoggin River be consolidated into a single appeal proceeding. IP specifically does not request a public hearing on its appeal.

- b. NRCM. Appellant NRCM argues that the September 21, 2005 permit/license issued by the Department for the Jay pulp and paper mill allows unacceptable levels of pollution to continue to be discharged and will not bring the Androscoggin River into attainment with minimum water quality standards as required by state law and the federal Clean Water Act. Specifically, NRCM contends that:
 - (1) The 10-year compliance schedules for TSS and phosphorus are unlawful and unnecessary, and stricter limits for these pollutants can be achieved through the use of proven and widely available technologies that can be installed within three years;

- (2) The TSS limits are illegally high because they cause a visible plume, turbidity and other properties that result in violation of narrative water quality standards;
- (3) The BOD limits are higher than limits known to cause non-attainment with water quality standards, and the Department illegally and unnecessarily compensates for these higher limits with additional oxygen injection into Gulf Island Pond; and
- (4) The monthly average BOD limit is illegally high because it is based on an illegal 30-day average dissolved oxygen standard of 6.5 parts per million at 22 degrees Celsius.

On the basis of its arguments, NRCM requests that the Board modify the permit/license for the Jay mill approved by the Department to require that:

- IP comply with all final effluent limits in no more than three years;
- TSS limits be reduced to a level that will not result in a visible plume;
- BOD discharges be reduced as much as possible before requiring additional instream oxygen injection and should not exceed the limits requested by IP in its application (a daily maximum of 8,000 pounds per day and a monthly average of 4,500 pounds per day); and
- BOD limits be based on a 30-day dissolved oxygen standard that is protective of indigenous coldwater fish.

Finally, NRCM requests a public hearing on its appeal and also requests that it be permitted to submit specified supplemental evidence into the record.

- (c) CLF, et al. Appellant CLF, et al. argues that the Department's September 21, 2005 decision approving a waste discharge license and MEPDES permit for the Androscoggin (Jay) pulp and paper mill violates the federal Clean Water Act and Maine law. Specifically, Appellant CLF, et al. contends that the ten year schedule of compliance for final effluent limitations for various pollutants (including total phosphorus, ortho-phosphorus, summertime TSS, and annual TSS), as well as the five year schedule of compliance for the oxygenation injection system imposed to meet Maine water quality standards in Gulf Island Pond, violates Maine and federal law for the following reasons:

- (1) State and federal law prohibit the use of a compliance schedule when setting final effluent limitations that are necessary to attain the pre-July 1, 1977 dissolved oxygen standard of 5 parts per million, and this prohibition also extends to the oxygenation system requirement that is being imposed in lieu of lower effluent limitations;
- (2) The approved ten year compliance schedule for final effluent limitations and five year compliance schedule for additional oxygen injection violate the requirement of

State law that schedules of compliance “must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain [water quality] standards;” and

- (3) The approved compliance schedule for final effluent limitations and for additional oxygen injection violates the requirement of Department’s Chapter 523 Rules that schedules of compliance exceeding 1 year must include interim requirements and the dates for their achievement.

On the basis of its arguments, Appellant CLF, et al. requests that the Board modify the permit/license for the Jay mill approved by the Department to require immediate attainment of all final effluent limitations and immediate completion of the additional oxygen injection system or, if the Board determines that compliance schedules are legal, to require attainment of water quality standards in as short a time as possible and to impose specific interim enforceable requirements.

- d. FPLE. Appellant FPLE argues that the provisions of the Department’s decision regarding the allocation of responsibility to IP for additional oxygen injection into Gulf Island Pond are legally and factually erroneous, and incorporates by reference its appeal of the water quality certification for the Gulf Island-Deer Rips Project (see Section 6 below). Specifically, FPLE contends that:

- (1) The requirement establishing the amount of oxygen to be injected by IP is based incorrectly on the Department’s flawed assumption that FPLE is responsible for mitigating the effects on non-point source pollution, unknown sediment oxygen demand, and historic “legacy” pollution in Gulf Island Pond;
- (2) IP and the other point sources discharging into Gulf Island Pond are responsible for bearing the burden of additional oxygen injection;
- (3) Gulf Island Dam does not contribute to non-attainment of dissolved oxygen standards in deeper portion of Gulf Island Pond; and
- (4) The Department’s decision to relieve IP of the burden to reduce the impacts of its discharges on the river, in exchange for assigning that burden to FPLE, is an improper use of the State’s anti-degradation policy and is a violation of the Equal Protection Clauses of the United States and Maine Constitutions.

On the basis of its arguments, Appellant FPLE requests that the Board eliminate the requirement for FPLE to inject additional oxygen into Gulf Island Pond and reallocate this responsibility to IP or other appropriate parties.

Finally, Appellant FPLE requests a public hearing on its appeal, and further requests that all its appeals be consolidated.

4. SUMMARY OF APPEALS OF WDL/MEPDES PERMIT FOR RUMFORD PULP AND PAPER MILL

Appeals of the Department's September 21, 2005 decision approving a waste discharge license and MEPDES permit for the Rumford pulp and paper mill were filed by three parties: (a) RPC; (b) FPPE; and (c) CLF, et al.

- a. RPC. Appellant RPC argues that the provision of the permit/license requiring that RPC participate in the installation and operation of an additional oxygen injection system is based on a flawed and inadequate analysis of oxygen injection, an improper rejection of attainment of standards through improved mixing, and establishes requirements that may be impossible to implement. Specifically, RPC contends that:
- (1) Its required participation in the existing oxygenation facility more than compensates for the Rumford mill's discharge into Gulf Island Pond;
 - (2) The Department performed a flawed analysis of the oxygen injection requirements by making substantial changes to the water quality model without recalibrating the model;
 - (3) The Department's modeling software is not adequate to properly assign oxygen injection rates and locations in Gulf Island Pond; and
 - (4) RPC does not own land at the proposed location of the additional oxygen injection system and cannot accept a condition that may be impossible to comply with.

Appellant RPC further argues that the requirement of the permit/license that RPC participate in ambient water quality monitoring is inconsistent with other monitoring provisions, in that it fails to set an annual cap on expenditures, contains no endpoint criteria or date for terminating the monitoring program, and is too broad in the scope of sampling locations.

On the basis of its arguments, Appellant RPC requests that the Board eliminate RPC's requirement to provide additional oxygenation into Gulf Island Pond, or in the alternative, that Board make any requirements for additional oxygen injection contingent upon the guaranteed availability of a fully permitted site to build the oxygen injection system. Appellant RPC further requests that a proper analysis of options for improving mixing in the pond not be precluded as a means of achieving attainment.

Finally, Appellant RPC requests a consolidated public hearing on its appeal and all other appeals based on the Department's TMDL.

- b. FPLE. Appellant FPLE argues that the provisions of the Department’s decision regarding the allocation of responsibility to RPC for additional oxygen injection into Gulf Island Pond is legally and factually erroneous, and incorporates by reference its appeal of the water quality certification for the Gulf Island-Deer Rips Project (see Section 6 below). Specifically, FPLE contends that:
- (1) The requirement establishing the amount of oxygen to be injected by RPC is based incorrectly on the Department’s flawed assumption that FPLE is responsible for mitigating the effects on non-point source pollution, unknown sediment oxygen demand, and historic “legacy” pollution in Gulf Island Pond;
 - (2) RPC and the other point sources discharging into Gulf Island Pond are responsible for bearing the burden of additional oxygen injection;
 - (3) Gulf Island Dam does not contribute to non-attainment of dissolved oxygen standards in deeper portion of Gulf Island Pond; and
 - (4) The Department’s decision to relieve RPC of the burden to reduce the impacts of its discharges on the river, in exchange for assigning that burden to FPLE, is an improper use of the State’s anti-degradation policy and is a violation of the Equal Protection Clauses of the United States and Maine Constitutions.

On the basis of its arguments, Appellant FPLE requests that the Board eliminate the requirement for FPLE to inject additional oxygen into Gulf Island Pond and reallocate this responsibility to RPC or other appropriate parties.

Finally, Appellant FPLE requests a public hearing on its appeal, and further requests that all its appeals be consolidated.

- c. CLF et al. Appellant CLF, et al. argues that the Department’s September 21, 2005 decision approving a waste discharge license and MEPDES permit for the Rumford pulp and paper mill violates the federal Clean Water Act and Maine law. Specifically, Appellant CLF, et al. contends that the five year schedule of compliance for final effluent limitations for various pollutants (including total phosphorus, ortho-phosphorus, and summertime TSS), as well as the five year schedule for the oxygenation injection system imposed to meet Maine water quality standards in Gulf Island Pond, violates Maine and federal law for the following reasons:

- (1) State and federal law prohibit the use of a compliance schedule when setting final effluent limitations that are necessary to attain the pre-July 1, 1977 dissolved oxygen standard of 5 parts per million, and this prohibition also extends to the oxygenation system requirement that is being imposed in lieu of lower effluent limitations;

- (2) The approved five year compliance schedule for final effluent limitations and for additional oxygen injection violate the requirement of State law that schedules of compliance “must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain [water quality] standards;” and
- (3) The approved compliance schedule for final effluent limitations and for additional oxygen injection violates the requirement of Department’s Chapter 523 Rules that schedules of compliance exceeding 1 year must include interim requirements and the dates for their achievement.

On the basis of its arguments, Appellant CLF, et al. requests that the Board modify the permit/license for the Rumford mill approved by the Department to require immediate attainment of all final effluent limitations and immediate completion of the additional oxygen injection system or, if the Board determines that compliance schedules are legal, to require attainment of water quality standards in as short a time as possible and to impose specific interim enforceable requirements.

5. SUMMARY OF APPEAL OF WDL/MEPDES PERMIT FOR LIVERMORE FALLS WASTEWATER TREATMENT FACILITY

An appeal of the Department’s September 21, 2005 decision approving a waste discharge license and MEPDES permit for the Livermore Falls wastewater treatment facility was filed by the Towns.²

Appellant Towns argue that the ortho-phosphorus limitations in the permit/license are arbitrary and capricious, unfair, unreasonable and unnecessary. Specifically, Appellant Towns contend that:

- a. The new monthly average mass limit for ortho-phosphorus discharges is premature, in that (1) the cost of the required treatment equipment is high and the environmental improvement is uncertain, (2) the science underpinning the TMDL is under debate, and (3) the results of the reduction in discharges from the paper mills, who contribute 80% of the ortho-phosphorus loading to Gulf Island Pond, should be observed first;
- b. The permit/license for the Livermore Falls wastewater treatment facility and the water quality certification for the Gulf Island-Deer Rips Hydro Project are incongruent, in that the facility is required to install new ortho-phosphorus treatment equipment even if FPLE takes measures to mitigate the impact of Gulf Island Dam without contributing to the cost of the wastewater treatment facility’s phosphorus treatment;

² The waste discharge license and Maine Pollutant Discharge Elimination System Permit for the Livermore Falls wastewater treatment plant were subsequently modified and the Towns were dismissed as an appellant. See Section 9 below.

- c. The Livermore Falls wastewater treatment facility should have the same schedule of compliance for a new ortho-phosphorus limit, if required, as applies to the ortho-phosphorus limits for the paper mills;
- d. The cost to comply with the new ortho-phosphorus limit is significantly higher than assumed by the Department and creates an unfair burden to the Towns' rate payers and tax payers;
- e. The Department has the authority to require that FPLE contribute to phosphorus reduction efforts at the Livermore Falls wastewater treatment facility;
- f. A cost-benefit analysis would not support the installation of expensive phosphorus treatment equipment at the Livermore Falls wastewater treatment facility in light of the fact the facility is already typically meeting the new ortho-phosphorus limit;
- g. The Department's findings regarding the contribution of the Livermore Falls wastewater treatment facility to algae growth in Gulf Island Pond are not based on sound science; and
- h. The requirement that the Livermore Falls wastewater treatment facility participate in ambient water quality monitoring is an unnecessary and redundant expense.

On the basis of its arguments, Appellant Towns request that the Board modify the permit/license for the Livermore Falls wastewater treatment facility approved by the Department to either (a) eliminate the new phosphorus limit or (b) include language requiring that FPLE contribute all capital costs and operation and maintenance costs for any required phosphorus treatment equipment. In the alternative, Appellant Towns request that the Board modify the permit/license to delay implementation of any new phosphorus limit until all further studies now contemplated are complete. Appellant Towns further request that the Board modify the permit/license to eliminate the requirement for ambient water quality monitoring.

Finally, Appellant Towns request a public hearing on its appeal, and that all pending appeals of related Department decisions be reviewed simultaneously.

6. SUMMARY OF APPEALS OF WATER QUALITY CERTIFICATION FOR GULF ISLAND-DEER RIPS HYDRO PROJECT

Appeals of the Department's decision approving water quality certification for the Gulf Island-Deer Rips Hydro Project were filed by three parties: (a) FPLE; (b) CLF, et al.; and (c) Towns.³

³ The waste discharge license and Maine Pollutant Discharge Elimination System Permit for the Livermore Falls wastewater treatment plant were subsequently modified and the Towns were dismissed as an appellant. See Section 9 below.

- a. Appeal of FPLE. Appellant FPLE argues that the Department's September 21, 2005 water quality certification is arbitrary and capricious, is against the weight of the credible evidence, and is erroneous as a matter of law. Specifically, Appellant FPLE contends that:
- (1) The water quality certification unlawfully imposes more responsibility for oxygenation on FPLE, which discharges nothing into the river, than on any of the three paper mills which each discharge billions of gallons of wastewater annually into the river above Gulf Island Pond;
 - (2) The Department sidesteps its responsibility for regulating non-point source pollution by illegally imposing that burden on FPLE;
 - (3) The permitting process appears to have been driven by politics, not by law or science;
 - (4) The water quality certification provisions relating to the allocation of oxygenation responsibility are based on several pivotal but incorrect assumptions, and the method by which the Department arrived at the oxygenation allocation is not found in the certification;
 - (5) Gulf Island Dam does not "discharge" into Gulf Island Pond and thus cannot be regulated in the manner assumed by the water quality certification;
 - (6) The Department has impermissibly based the water quality certification upon effects that must be excluded under Maine law, and the certification is fundamentally flawed, in that Gulf Island Dam has been held responsible for mitigating the impacts of non-point sources, natural sources, and unknown sediment oxygen demand on water quality in Gulf Island Pond;
 - (7) The Department's process has been seriously flawed, in that the Department has allowed important and recent public records to be destroyed and has failed to live up to its promise to the Board that its process would be transparent;
 - (8) The Department's rationale for assessing responsibility to FPLE to mitigate for algae blooms and to pay for the phosphorus reductions at an upstream publicly-owned treatment works exceed the Department's powers, is contrary to state and federal statutes, and is arbitrary and capricious;
 - (9) The minimum flow required by the water quality certification is excessive and not supported by the record evidence⁴; and

⁴ This item of the appeal was subsequently withdrawn by FPLE. See Section 8 below.

- (10) The water quality certification's condition reserving to the Department the right to order fish passage at the project dams for fish neither currently in the river, nor on a timetable to be introduced in to the river, is unlawful.⁵

On the basis of its arguments, Appellant FPLE requests that the Board amend the water quality certification approved by the Department as follows:

- Modify Condition 2 to reduce the minimum flow releases required from the project dams;⁶
- Delete Condition 4 relating to the future installation of fish passage facilities;⁷
- Delete the portions of Condition 5 requiring that FPLE inject additional oxygen into Gulf Island Pond at Lower Narrows; and
- Delete Condition 6 requiring that FPLE pay for phosphorus reductions at the Livermore Falls Wastewater Treatment Facility.

Finally, Appellant FPLE requests a public hearing on its appeal, and further requests that its appeal be consolidated with FPLE's concurrent appeals of the Department's September 21, 2005 Maine Pollutant Discharge Elimination System permits and Maine Waste discharge Licenses for IP's (now Verso Paper's) pulp and paper mill in Jay and RPC's pulp and paper mill in Rumford, both of which discharge into the Androscoggin River above Gulf Island Pond.

- b. Appeal of CLF, et al. Appellant CLF, et al. argues that the Department's September 21, 2005 water quality certification violates the federal Clean Water Act and Maine law. Specifically, Appellant CLF, et al. contends that the five year schedule of compliance for the oxygenation injection system imposed to meet Maine water quality standards in Gulf Island Pond violates Maine and federal law for the following reasons:

- (1) State and federal law prohibit the use of a compliance schedule when setting final effluent limitations that are necessary to attain the pre-July 1, 1977 dissolved oxygen standard of 5 parts per million, and this prohibition extends to the oxygenation system requirement that is being imposed in lieu of lower effluent limitations;
- (2) The approved five year compliance schedule for additional oxygen injection violates the requirement of State law that schedules of compliance "must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain [water quality] standards;" and

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

- (3) The approved compliance schedule for additional oxygen injection violates the requirement of Department's Chapter 523 Rules that schedules of compliance exceeding 1 year must include interim requirements and the dates for their achievement.

On the basis of its arguments, Appellant CLF, et al. requests that the Board modify the water quality certification approved by the Department to require immediate completion of the additional oxygen injection system or, if the Board determines that a compliance schedule for additional oxygen injection is legal, to require attainment of water quality standards in as short a time as possible and to impose specific interim enforceable requirements.

- c. Appeal of Towns. Appellant Towns argue that the Department is forcing the Towns to incur substantial costs to meet discharge limitations for phosphorus from the Livermore Falls wastewater treatment facility in order to address a problem of algae blooms in Gulf Island Pond that is caused in large part by the presence of FPLE's Gulf Island Dam.⁸

Appellant Towns contend that, but for the fact that the Gulf Island dam is in place, the discharge of phosphorus from the Livermore Falls wastewater treatment facility would have no measurable adverse effect on the Androscoggin River.

Appellant Towns further contend that it is incongruous to allow FPLE the option of taking "other equivalent measures" to reduce algae blooms in Gulf Island Pond while still requiring that the Livermore Falls wastewater treatment facility install and operate phosphorus control equipment without any funding from FPLE.

Appellant Towns further contend that, if the Livermore Falls wastewater treatment facility is required to install equipment for phosphorus removal, then FPLE should be required to fully fund the capital costs and annual operation and maintenance costs for this equipment. Appellant Towns state that the expected capital costs for phosphorus treatment equipment are approximately \$375,000 and the expected annual operation and maintenance costs for this equipment are approximately \$25,000, and contend that the Department's requirement in the water quality certification that FPLE only pay \$100,000 towards the capital cost of the phosphorus treatment equipment is unreasonable, unfair, and arbitrary and capricious.

Appellant Towns further contend that it has not been definitely shown that a reduction in phosphorus discharges from the Livermore Falls wastewater treatment facility will eliminate algae growth and resultant algae blooms in Gulf Island Pond, and that, as a consequence, any limitation on phosphorus discharges from the facility is arbitrary.

⁸ The waste discharge license and Maine Pollutant Discharge Elimination System Permit for the Livermore Falls waste water treatment plant were subsequently modified and the Towns were dismissed as an appellant. See Section 9 below.

Finally, Appellant Towns contend that, because Gulf Island Dam actually causes the violation of water quality standards in Gulf Island Pond, it must be considered a discharger for purpose of water quality control, and that the Department therefore has the authority to require FPLE to contribute to phosphorus reduction at the Livermore Falls wastewater treatment facility.

On the basis of its arguments, Appellant Towns request that the Board modify the Department's water quality certification to require that FPLE contribute the entire cost of phosphorus mitigation efforts at the Livermore Falls wastewater treatment facility, with no option allowed for alternative measures, and that the facility's compliance with any phosphorus limitations be conditioned upon FPLE's compliance with that contribution obligation.

Appellant Towns further request that, in the event that FPLE is allowed to undertake measures for algae bloom control in Gulf Island Pond other than contributing to the cost of phosphorus mitigation efforts at the Livermore Falls wastewater treatment facility, the Board eliminate the requirement that the facility be required to implement phosphorus control measures.

Finally, Appellant Towns request a public hearing on their appeal, and further request that all appeals relating to discharges to the Androscoggin River be reviewed simultaneously by the Board.

7. SUMMARY OF APPEALS OF SO-CALLED "SIDE AGREEMENTS"

Appeals of the so-called "side agreements" were filed by two parties: (a) FPLE; and (b) NRCM.⁹

- a. FPLE. Appellant FPLE argues that the so-called "side agreement" between the Department and RPC unlawfully and inappropriately contains language whereby RPC may be relieved of any requirement for additional oxygen injection and the Department pre-determines the outcome of future licensing proceedings.

On the basis of its argument, FPLE requests that the Board either reject and void the DEP/RPC "side agreement" in its entirety or delete Paragraphs 1(b), 1(c), 1(f), 5, 6, 7, 8, 16, and 18 of the agreement.

- b. NRCM. Appellant NRCM argues that the so-called "side agreements" between the Department and IP and between the Department and RPC violate state law, sound agency policy, and the principles of democratic government. In addition, Appellant NRCM

⁹ By letters dated November 29, 2005 to IP and RPC, the Department rescinded the so-called "side agreements" pending the outcome of the appeals of the companies' licenses.

argues that the “side agreement” between the Department and RPC includes a 10-year compliance schedule that is illegal under both federal and state law.

On the basis of its arguments, Appellant NRCM requests that the Board rule that the “side agreements” are void.

8. PROCESSING OF APPEALS

- a. Stay of Deadline for Response to Appeals and Scheduling of Conference. Under the provisions of Section 24 of the Department’s Chapter 2 Rules, complete responses to an appeal must be filed within 30 days of the filing of an appeal if there is no proposed supplemental evidence that requires a ruling by the Board Chair.

On November 10, 2005, after providing an opportunity to all parties to submit comments, the Board Chair issued a letter suspending the 30-day response deadline until further notice and scheduling a conference with all parties to establish a schedule and process for the Board’s consideration of the appeals.

- b. Conference of Parties and Scheduling Decision. A conference of the parties was held in Augusta on November 30, 2005. In a letter dated December 6, 2005, the Board Chair established a schedule for the Department to submit a motion to stay the appeal proceedings or other related motions. The Board Chair also established a schedule for responses by the parties to the Department’s motion(s). The Board Chair also stated that, pending the Board’s decisions on the appeals, all departmental licenses and water quality certifications being appealed remain in effect, and that, if any party finds that a delay in the Board’s hearing the appeals will cause undue hardship with respect to timely implementation of a license or certification requirement from which the party has appealed, then that party may make a motion for stay of that requirement or other relief as necessary.
- c. Motion for Procedural Order. On December 16, 2005, the Department requested that the Board issue a procedural order: (1) that allows the Department to reconsider the terms of IP’s license in light of recently received waste discharge data, either through a remand to the Department, or in the alternative, by allowing the Department time to complete a license modification proceeding; (2) that holds in abeyance the appeals of RPC’s and Livermore Falls’ licenses, as well as of FPLE’s water quality certification, at least until the Department completes reconsideration of IP’s permit terms; (3) that grants stays of specific license terms only to the extent that the requesting party appealed the provision in question and demonstrates that it will suffer undue hardship in the absence of a stay; and (4) that dismisses the appeals of the so-called “side agreements” between the Department and IP and RPC, respectively.

Responses to the Department’s request for a procedural order were subsequently received from all of the parties.

- d. Motions for Stays. On January 9, 2006, separate motions for stays were submitted by FPLE, the Towns, and RPC.

FPLE requested that the Board stay the effectiveness of the September 21, 2005 water quality certification and all of its conditions or, alternatively, that the Board stay the conditions related to oxygen allocation, minimum flows, fish passage, and phosphorus remediation at the Livermore Falls wastewater treatment facility. A response to FPLE's request was subsequently submitted by the Department.

The Towns requested that the Board stay the requirement of the September 21, 2005 permit and license for the Livermore Falls wastewater treatment facility that the facility meet a new effluent limit for phosphorus.

RPC requested that the Board stay the requirement of the September 21, 2005 permit and license for the company's pulp and paper mill establishing a timeline of actions to provide additional oxygen injection in Gulf Island Pond.

- e. Board Action on Motion for Procedural Order. On February 16, 2006, after providing an opportunity to be heard to the Department and all parties, the Board considered the Department's motion to hold the appeals in abeyance while the Department re-evaluates the terms of the IP license. While no formal vote was taken, it was the consensus of the Board that it will retain jurisdiction over the appeals, but delay consideration of those appeals for several months until the Department has had an opportunity to obtain and analyze additional data regarding IP's processes and discharges to the Androscoggin River. Following its review, the Department may bring a draft order back to the Board for consideration as part of the appeals process.

Concurrently, the Board voted to authorize the Chair to rule on the motions by the parties to stay various permit and certification conditions pending a decision on the appeals.¹⁰

- f. Procedural Orders on Motions to Stay. In a Procedural Order dated February 22, 2006 and corrected February 28, 2006, the Board Chair approved a stay of the ortho-phosphate effluent limitation in the license for the Livermore Falls wastewater treatment facility.

In Procedural Orders dated March 22, 2006, the Board Chair approved a stay of the schedule of compliance for construction of an additional Gulf Island Pond oxygen injection system or equivalent measures in the licenses for the IP and RPC paper mills.¹¹

¹⁰ See Board of Environmental Protection Meeting Minutes, February 16, 2006.

¹¹ By letter dated March 6, 2006, IP requested that, in the event the Board granted RPC's request for a stay of its license requirement regarding additional oxygen injection in Gulf Island Pond, the Board stay the comparable provision of IP's license.

Finally, in a Procedural Order dated March 30, 2006, the Board Chair approved a stay of the conditions relating to minimum flow releases, fish passage facilities, and additional oxygenation requirements in FPLE's water quality certification.

- g. Department Status Report. On May 11, 2006, the Department reported to the Board on the status of its review of the permits for the IP and RPC paper mills.

The Department reported that it was circulating for public comment a draft modification to the IP license that would incorporate more stringent limitations for several pollutants¹² and reduced oxygen injection requirements, and that would shorten the schedules of compliance for several pollutants.

The Department also reported that it was circulating for public comment a draft modification to the RPC license that would eliminate or shorten the schedules of compliance for several pollutants.

The Department further reported that the Livermore Falls wastewater treatment facility was already meeting its new phosphorus limit and that additional phosphorus treatment at the facility was not needed now. The Department stated that, as a consequence, it would not defend on appeal the condition of the water quality certification requiring that FPLE contribute toward the capital costs of equipment to remove phosphorus from the Livermore Falls facility effluent.

Finally, the Department stated that it had not found any reason to modify the license for the Livermore Falls facility.

- h. Conference of Counsel and First Procedural Order. A conference of counsel was held in Augusta on June 29, 2006. In a First Procedural Order dated July 10, 2006, Board Member Virginia Plummer, acting as the Presiding Officer, addressed the process for Board consideration of the pending appeals and requests for a public hearing, as well as the process for Board consideration of the draft license modifications proposed by the Department, and other procedural issues discussed at the conference. In this Order, the Presiding Officer ruled that the Department may proceed to finalize the proposed modification of the RPC license and that the Board would incorporate the modified license into the record of the pending appeals of that license. The Presiding Officer further ruled that the Board would consider the Department's proposed modifications of the IP license as the Department's new recommendations on the pending appeals of that license. The Presiding Officer also ruled that a hearing, if scheduled by the Board, would be in the nature of an appeal hearing of the Department's decisions, and that the precise issues to be addressed at any hearing and other procedural issues would be determined after a pre-hearing conference with the parties. The Presiding Officer also ruled that

¹² The draft modification included (1) reduced summertime limits for BOD and (2) reduced limits for BOD, TSS, and total phosphorus should the wastewater from the Wausau-Mosinee facility in Livermore Falls no longer be treated at the IP wastewater treatment facility.

certain record documents¹³ would be distributed to the Board at this time. Finally, the Presiding Officer established a schedule for Board consideration of the requests for a public hearing and a deadline for any appeal of the Order to the full Board.

On July 13, 2006, NRCM filed a timely appeal of the First Procedural Order. In its appeal, NRCM requested that the Board amend the Order to require that the fact sheet accompanying the Department's proposed IP license modification be distributed to the Board in advance of the Board's consideration of the pending requests for a public hearing.

On July 20, 2006, after providing an opportunity to be heard to the parties, the Board voted to deny the appeal of the First Procedural Order.¹⁴

- i. Action on Requests for Public Hearing. On August 3, 2006, after providing an opportunity to be heard to the parties, the Board voted to schedule a consolidated public hearing on the pending appeals of the water quality certification for FPLE's Gulf Island-Deer Rips Hydro Project, and the permits and licenses for Verso's¹⁵ (previously IP's) Jay pulp and paper mill, RPC's pulp and paper mill, and the Town of Livermore Falls' wastewater treatment facility.¹⁶
- j. Notice and Opportunity for Intervention. In accordance with the Maine Administrative Procedure Act, notice of the public hearing and the opportunity for intervention on the appeals was published in the Kennebec Journal, Morning Sentinel, and Lewiston Sun Journal on August 10, 2006. The deadline for petitions to intervene was established as August 21, 2006.

A timely petition to intervene was submitted by the Pulp and Paperworkers Resource Council. FPLE subsequently filed a letter opposing the petition to intervene.
- k. License Modification. On August 7, 2006, the Department issued an Order approving the modification of the September 21, 2005 Maine Pollutant Discharge Elimination System Permit and Maine Waste discharge License for RPC's pulp and paper mill.

¹³ These documents included: the Department decisions under appeal; the appeal documents; the Board Chair's Procedural Orders on the Motions for Stays; the Department's May 2005 "Androscoggin River Total Maximum Daily Load" Report; EPA's July 18, 2005 Notification of Approval of Androscoggin River TMDL; the Department's draft IP and RPC license modifications minus the IP fact sheet; the comments received on the draft license modifications; and a June 20, 2006 letter from the Towns.

¹⁴ See Board of Environmental Protection Meeting Minutes, July 20, 2006.

¹⁵ In an Order dated July 12, 2006 and corrected September 4, 2006, the Department approved the transfer of the license for the Jay pulp and paper mill from IP to CMP Androscoggin LLC, which subsequently changed its name to Verso Androscoggin LLC ("Verso"). Henceforth, the licensee for the Jay pulp and paper mill will be referred to herein as Verso.

¹⁶ See Board of Environmental Protection Meeting Minutes, August 3, 2006.

A timely appeal of the RPC license modification was filed by CLF, et al.¹⁷ CLF, et al. requested that its appeal be consolidated with the related pending appeals.

- l. Pre-Hearing Conference and Second Procedural Order. A pre-hearing conference was held in Augusta on September 28, 2006. In a Second Procedural Order dated October 6, 2006, the Presiding Officer addressed pre-hearing procedures, issues to be addressed at the hearing, the organization of the hearing, and other procedural issues discussed at the conference. In this Order, the Presiding Officer ruled that the appeal of the RPC license modification would be consolidated with the pending related appeals. The Presiding Officer also ruled that the Board's ability to accept additional evidence into the record is not limited by the provisions of the Department's Chapter 2 Rules. The Presiding Officer further ruled that the issues to be addressed in the proceeding would be limited to: a) issues raised in the initial appeals, b) issues raised in the appeal of the RPC license modification, and c) issues raised by the proposed modification of the Verso license. The Presiding Officer further ruled that everything in the Department files which was considered in the drafting of the Department's decisions under appeal, the RPC license modification, and the proposed modification of the Verso license is part of the record before the Board in this proceeding. The Presiding Officer also ruled that each appellee was required to file a single, concise response to the issues raised by the other parties in their appeals of that appellee's license or certification. The Presiding Officer further ruled that a decision regarding how issues would be addressed at the hearing would be deferred until after the appellees' responses to the appeals were received. Finally, the Presiding Officer established an organization for the hearing, procedures for a fly-over site visit for Board members, a deadline for appellees' responses to the appeals, and a deadline for any appeal of the Order to the full Board.
- m. Action on Petition to Intervene. On October 5, 2006, the Board considered the petition to intervene filed by the Pulp and Paperworkers Resource Council. Following clarification of the rights of participation in the process as an interested person, the Pulp and Paperworkers Resource Council withdrew its request for intervenor status, and no vote was taken.¹⁸
- n. Appeals of Second Procedural Order. On October 16, 2006, FPLE, CLF, et al., and NRCM each filed a timely appeal of the Second Procedural Order.

In its appeal, FPLE reserved its right to object to the Order in the event that the Board contemplated unlimited issues for the hearing.

In its appeal, CLF, et al. requested that the Board revise the Order to restrict the submittal of supplemental evidence into the record in accordance with 38 MRSA Section 341-D(4)(A)(2).

¹⁷ CLF et al. stated that it was appealing the license modification on the same grounds and for the same reasons cited in its appeal of the original license.

¹⁸ See Board of Environmental Protection Meeting Minutes, October 5, 2006.

In its appeal, NRCM requested that the Board revise the Order to make plain that the only supplemental evidence that may be introduced at the public hearing is supplemental evidence properly designated by the parties in their appeals.

- o. Action on Appeals of Second Procedural Order. On October 19, 2006, after providing an opportunity to be heard to the parties, the Board voted to deny the appeals of the Second Procedural Order.¹⁹
- p. Designation of Significant Public Interest. On October 19, 2006, after providing an opportunity to be heard to the parties, the Board voted to designate the proceeding on the pending appeals as one of significant public interest and to conduct the public hearing under the provisions of the Department's Chapter 30 Rules.²⁰
- q. Aerial Site Visit. On October 19, 2006, an aerial site visit of the Androscoggin River Valley was conducted for the Board by the Department.
- r. Response to Appeals. On November 9 and 13, 2006, FPLE, Verso, and RPC each filed a response to the appeals of their respective certification or license.
- s. Pre-Hearing Conference and Third Procedural Order. A pre-hearing conference was held in Augusta on November 29, 2006. In a Third Procedural Order dated December 6, 2006, the Presiding Officer addressed the issues to be addressed at the hearing, the procedural rules governing the proceeding, and other procedural issues discussed at the conference. In this Order, the Presiding Officer ruled that the Board will not decide the legality of compliance schedules or any limitations on their use prior to the public hearing on the appeals, and the parties would not be asked to submit briefs on these issues before the hearing. The Presiding Officer also ruled that all parties to the proceeding may file both direct and rebuttal testimony regarding the Androscoggin River TMDL and the Gulf Island Pond oxygenation system, and that NRCM may file rebuttal testimony on certain issues relating to the RPC license. The Presiding Officer further ruled that, with respect to all other issues raised in the various pending appeals, testimony would be limited to the holder of the license/certification at issue and the party or parties that appealed the specific license/certification provision. The Presiding Officer provided an explanation of various clarifications of and variations from the Chapter 30 Rules for the conduct of the public hearing. Finally, the Presiding Officer established deadlines for the submission of witness lists, for pre-filed direct testimony, for pre-filed rebuttal testimony, and for any appeal of the Order to the full Board.

No appeals were filed of the Third Procedural Order.

¹⁹ See Board of Environmental Protection Meeting Minutes, October 19, 2006.

²⁰ Ibid.

- t. Withdrawal of Portion of FPLE Appeal. On December 4, 2006, FPLE withdrew its appeal of Condition 4 of the water quality certification relating to the future installation of fish passage facilities at the Gulf island-Deer Rips Hydro Project.
- u. Overview of Aerial Site Visit. On December 21, 2006, the Department provided a public narrative overview of the October 19, 2006 aerial site visit for those Board members who were unable to attend the site visit.
- v. Pre-Hearing Conference, Withdrawal of Portion of FPLE Appeal, and Fourth Procedural Order. A pre-hearing conference was held in Augusta on January 31, 2007.

On February 2, 2007, FPLE confirmed its statement at the pre-hearing conference that it was withdrawing its appeal of Condition 2 of the water quality certification relating to minimum flow releases at the Gulf island-Deer Rips Hydro Project.

In a Fourth Procedural Order dated February 6, 2007, the Presiding Officer addressed the issues of witness lists, the organization of the hearing, and other procedural issues discussed at the conference. In this Order, the Presiding Officer established that, if any party wishes to have the Board request or command the presence of any current or former Department staff person or staff person at the Department of Inland Fisheries and Wildlife, the party must file a written request for each such staff person, and that each request must describe the evidence the party expects to put into the record through the staff person, describe how it is relevant to the factual determinations and the legal conclusions based on those factual determinations that the Board must make in this proceeding, and explain why the evidence cannot be entered in any other way. The Presiding Officer also established that the Board would provide a draft schedule for the hearing following the submission of the pre-filed testimony, and that the Board would attempt to organize the proceeding so as to minimize the need to call the same witness on multiple days. The Presiding Officer further established that the Board will hold a workshop for Board members to review terminology and concepts that will be useful to the Board in the proceeding, and that handouts for the workshop would be distributed to the parties prior to the workshop. The Presiding Officer also established that the Board will investigate options for an evening session, reserved for receiving testimony from the general public, at a location north of Auburn (the site chosen for the hearing) and easily accessible by persons living in Rumford and Jay. Finally, the Presiding Officer established tentative dates for the Board workshop and the public hearing, as well as deadlines for parties to file requests for staff witnesses, for the Department to respond to any such requests, and for any appeal of the Order to the full Board.

On February 12, 2007, FPLE filed a timely appeal of the Fourth Procedural Order. In its appeal, FPLE requested that the deadline for parties to file requests for staff witnesses, and for the Department to respond to these requests, be extended until at least ten days after the parties have submitted their pre-file direct testimony.

On February 15, 2007, after providing an opportunity to the parties to be heard, the Board voted to deny the appeal of the Fourth Procedural Order.²¹

- x. Fifth Procedural Order. In a Fifth Procedural Order dated February 27, 2007, the Presiding Officer addressed Verso's request that certain current and former state agency staff persons appear as witnesses at the hearing.²² In this Order, the Presiding Officer ruled that the Board would request the appearance of Mr. Paul Mitnik²³ at the hearing for the purpose of responding to questions from the Board and the parties on the TMDL. The Presiding Officer further ruled that the Board would not request or compel the appearance of Mr. Gregg Wood²⁴ at the hearing, as he will be serving as staff to the Board. The Presiding Officer also ruled that it would request the appearance of Mr. Charlie Todd at the hearing for the purpose of responding to questions on the eagle studies he has conducted on the Androscoggin River and to be subject to cross-examination by the parties on this topic. Finally, the Order established a deadline for any appeal of the Order to the full Board.

On February 28, 2007, FPLE and Verso filed timely appeals of the Fifth Procedural Order.

In its appeal, FPLE requested that, if the Board solicits or received information from current DEP staff members regarding the merits of the proceeding, whether as witnesses or in staff "consultation," FPLE be afforded the right to call those individuals as witnesses for cross-examination.

In its appeal, Verso joined in FPLE's objection to the fifth Procedural Order to the extent that it would allow any DEP employee to testify the hearing without affording the parties an opportunity for cross-examination. In addition, Verso requested that the Board make Mr. Wood available to testify at the hearing, as requested by Verso.

On March 1, 2007, after providing an opportunity to the parties to be heard, the Board voted to deny the appeals of the Fifth Procedural Order.²⁵

- y. Board Workshop. On March 1, 2007, the Department conducted a public workshop for the Board on water resource management in Maine. A copy of the Department's powerpoint presentation and glossary of common water quality monitoring terms was made part of the record in the proceeding on the appeals.

²¹ Board of Environmental Protection Meeting Minutes, February 15, 2007.

²² CLF, et al. initially also requested that certain current and former agency staff persons appear as witnesses at the hearing, but subsequently withdrew this request.

²³ Mr. Mitnik is the former DEP staff person responsible for the development of the Androscoggin River TMDL.

²⁴ Mr. Wood is the current DEP staff person responsible for drafting the September 21, 2005 license for Verso and the subsequent proposed modification of that license.

²⁵ Board of Environmental Protection Meeting Minutes, March 1, 2007.

- z. Pre-Hearing Conference and Sixth Procedural Order. A pre-hearing conference was held in Augusta on April 17, 2007. In a Sixth Procedural Order dated April 18, 2007, the Presiding Officer addressed the issues of the organization of the hearing and a motion to strike certain pre-filed testimony. In this Order, the Presiding Officer concluded that the agreements reached by the parties on the motion to strike were acceptable, and that no ruling on the motion was needed.²⁶ The Presiding Officer also modified the Fourth Procedural Order regarding the presentation of testimony by the parties. The Presiding Officer established that each party would be allowed time to make an opening statement, to summarize its pre-filed testimony prior to cross-examination of witnesses, to present sur-rebuttal testimony, and to make closing statements. The Presiding Officer also established that the deadline for the parties to submit post-hearing briefs will be set at the close of the hearing. The Presiding Officer further established that time limits may be imposed on testimony from members of the general public. Finally, the Presiding Officer established a deadline for any appeal of the Order to the full Board.

No appeals of the Sixth Procedural Order were filed.

9. WITHDRAWAL OF APPEALS BY TOWNS OF LIVERMORE FALLS AND JAY

On May 2, 2007, at the beginning of the public hearing on the appeals, the Towns filed a motion for approval of a Stipulation and Consent Order Regarding License Minor Revision to resolve the Towns' appeal of the waste discharge license and MEDPES Permit for the Livermore Falls wastewater treatment facility as well as the Towns' appeal of the water quality certification for the Gulf Island-Deer Rips Hydro Project. The Towns also moved, conditioned upon approval of the Stipulation and Consent Order, for withdrawal of all pre-filed testimony by the Towns and for dismissal of the Towns as an appellant.

After providing an opportunity to be heard to the parties, the Board voted to approve the Towns' motion and version A of the proposed Stipulation and Consent Order.²⁷

10. PUBLIC HEARING

An adjudicatory hearing to receive testimony from the parties and the general public on whether the legal standards for wastewater discharge licenses and for water quality certification, as set forth in federal and state law and applicable regulations, have been met

²⁶ By letter dated April 4, 2007, Verso filed a motion to strike certain pre-filed testimony submitted by FPLE and CLF et al. By letter dated April 13, 2007, RPC joined in the motion to strike. By letter dated April 13, 2007, CLF et al. responded to the motion to strike. Verso and FPLE subsequently notified the Presiding Officer that they had resolved the issues relating to FPLE's testimony. Following discussion at the April 17, 2007 procedural conference, Verso, RPC and CLF, et al. agreed to a resolution of this matter, in which CLF et al. filed replacement direct testimony for its witness, Jon A. Lund.

²⁷ The approved Stipulation and Consent Order, signed May 2, 2007 by the Towns, FPLE, Verso, RPC and the DEP, has been entered into the public hearing record as Exhibit LF-2. The Stipulation and Consent Order includes Exhibit A, which specifies certain agreed-to modifications to the September 21, 2005 waste discharge license and MEPDES Permit for the Livermore Falls wastewater treatment facility.

Verso Paper (formerly International Paper))
Rumford Paper Company)
Town of Livermore Falls)
FPL Energy Maine Hydro LLC)

Summary of Appeals and Appeal Proceedings

was held on May 2, 3, 4, 8 and 9, 2007 in Auburn and on May 10 in Augusta. Daytime sessions were devoted to testimony from and cross-examination of witnesses called by the parties. Evening sessions on May 3 and 8 were devoted to receiving testimony from members of the general public.

Notice of the hearing was provided in accordance with the Maine Administrative Procedure Act (5 MRSA Section 9051-A).

11. CLOSING ARGUMENTS

On July 5, 2007, the Board heard closing arguments on the pending appeals from each of the parties.

This summary was prepared by Dana Murch, Department of Environmental Protection.

DATE: October 30, 2007